

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

DARRELL WILLIAMS

PLAINTIFF

VERSUS

CIVIL ACTION NO. 1:10cv300-LG-RHW

DEVON ROUSE, *et al.*

DEFENDANTS

**REPORT AND RECOMMENDATION
RECOMMENDING DISMISSAL OF DEFENDANT MARIE DUNCAN**

This case is before the Court *sua sponte* following a review of the pleadings and docket entries. Plaintiff filed this *pro se* prisoner civil rights complaint July 1, 2010. In accordance with the Court's order, the Clerk issued a summons for Defendant Marie Duncan July 19, 2010, but the summons was returned unexecuted July 30, 2010, with the notation, "no longer at this location." [11] On October 22, 2010, the Court ordered additional process issued to Duncan at her last known address [16], and the Clerk issued same on October 25, 2010. This process was returned to the Court unexecuted on December 10, 2010, bearing the notation, "Defendant does not live at the listed address." [21]

By order [23] entered January 11, 2011, the Court advised the Plaintiff that it is his responsibility to prosecute this case, and ordered him to "provide the Court a valid street address for service of process on Marie Duncan by January 31, 2011, or to show cause why his claims against Duncan should not be dismissed without prejudice for failure to serve process." Plaintiff filed no response to the show cause order. The copy of that order mailed to Plaintiff on January 11, 2011, was returned to the Court as undeliverable on February 11/2011.

On February 21, 2011, Defendants Rouse and Barnes filed [25] a motion for summary judgment and [27] memorandum in support. The copies of those documents mailed to Williams were returned to Defendants "because Mr. Williams was no longer at the Harrison County Adult

Detention Center.” [27] On March 2, 2011, Rouse and Barnes filed a notice of re-service of their summary judgment motion and memorandum on Plaintiff at Lucas County Jail in Toledo, OH. Plaintiff filed no response to the summary judgment motion. Plaintiff has never filed a change of address with the clerk, however, out of caution, the Court is mailing copies of this Report and Recommendation to both his docket address and the Ohio address contained in Defendant’s notice of re-service. [27]

RECOMMENDATION

Based upon the foregoing, the undersigned recommends that Plaintiff’s complaint be dismissed without prejudice as to Marie Duncan for failure to serve process. All other parties have consented to exercise of jurisdiction by the Magistrate Judge.

NOTICE OF RIGHT TO APPEAL/OBJECT

Pursuant to Rule 72(a)(3), *Local Uniform Civil Rules of the United States District Courts for the Northern District of Mississippi and the Southern District of Mississippi*, after service of a copy of this Report and Recommendation, each party has fourteen days to serve and file written objections to the Report and Recommendation. A party must file objections with the clerk of court and serve them upon the other parties and submit them to the assigned District Judge. Within seven days of service of the objection, the opposing party must either serve and file a response or notify the District Judge that they do not intend to respond to the objection.

An objecting party must specifically identify the findings, conclusions, and recommendations to which he objects; the District court need not consider frivolous, conclusive, or general objections. A party who fails to file written objections to the proposed findings, conclusions, and recommendations within fourteen (14) days of being served a copy shall be barred, except upon grounds of plain error, from attacking on appeal any proposed factual

finding or legal conclusion accepted by the District Court to which he did not object. *Douglass v. United Services Automobile Association*, 79 F.3d 1415, 1428-29 (5th Cir. 1996).

Signed, this the 14th day of June, 2011.

/s/ Robert H. Walker

ROBERT H. WALKER
UNITED STATES MAGISTRATE JUDGE